

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

United States of America

v.

Dino Perez,

Defendant.

C/A No. CR 7:02-01100

ORDER
(Written Opinion)

This matter is before the Court for a ruling on Defendant's letter to this Court dated June 24, 2006 and filed June 28, 2006, which the Court construes as a motion for reduction of sentence. In his letter, Defendant complains that he "gave the government cooperation with the understanding that it would reduce [his] sentence, and then it did not."

The Petitioner is proceeding *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

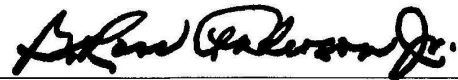
The relief Plaintiff seeks may only be had pursuant to Federal Rule of Criminal Procedure 35(b), which relevant part states: "Upon the government's motion made

within one year of sentencing, the court may reduce a sentence if . . . the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person." Plaintiff has no authority to make such a motion on his own behalf. "It is well-settled that whether to file a Rule 35(b) motion is a matter left to the government's discretion." *United States v. Wakefield*, 112 Fed.Appx.257, 258 (4th Cir. 2004) (citing *United States v. Dixon*, 998 F.2d 228, 230 (4th Cir. 2004).

Moreover, this Court may remedy the government's refusal to move for a reduction of sentence under Rule 35 only if the refusal is based on an unconstitutional motive, or if the government acted in bad faith. *See Wade v. United States*, 504 U.S. 181, 185-86 (1992). Plaintiff has failed to make any showing sufficient for the Court to grant relief. There is no evidence to show that Plaintiff's cooperation proved to be useful or substantial to the government in the prosecution of other crimes. Furthermore, there is certainly no evidence showing that the government has acted in an unconstitutional manner or in bad faith by not having filed a Rule 35(b) motion. Defendant's motion has no merit.

IT IS THEREFORE ORDERED that Defendant's motion for reduction of sentence be DENIED.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

July 13, 2006.

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this Order within sixty (60) days from the date this Order of judgment is filed, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.